

DRAFT

In September of 2007, the United States Attorney's Office for the Southern District of Florida, the largest and one of the most respected of the nation's prosecutorial arms of the Department of Justice, entered into a written Non-Prosecution Agreement which exchanged a commitment to not bring federal charges that related to a wide-ranging FBI investigation against Jeffrey Epstein for his agreement to a set of conditions which until the recent Miami Herald articles had never been publicly construed as being overly lenient other than by several victims who understandably wished for more Draconian punishment. The benefits that accrued to the Government from entering this Agreement were not set forth despite the pages of press condemning the negotiations which resulted in the Agreement. Amongst them were that Mr. Epstein went to a state jail to serve an 18 month sentence under the same conditions as any other county prisoner, that the jail sentence would be followed by a 12 month period of probation under the strictest of supervisory conditions, that Mr. Epstein would be required to plead guilty to a felony that the State had otherwise elected to forego that would mandate that he register as a Sex Offender for life, that Mr. Epstein agree to waive his principal defenses to any federal civil lawsuit brought under the provisions of a specific federal victim restitution statute and, further, to pay for a very respected attorney Robert Josefsberg to represent the victims under procedures that would be monitored by a Special Master, retired federal judge Edward Davis. As a result of this agreement – one that was the product of months of negotiations – Mr. Epstein paid millions of dollars of both restitution and civil monetary damages, each without a trial, each because of the concessions negotiated by the United States Attorney's Office to bring overall justice to a uniquely complex case at the crossroads of federal and state law enforcement powers. Rather than, as depicted by the media in its recent attacks, an isolated or

aberrational decision of a single US Attorney, the Agreement was carefully negotiated and then reviewed by most of the hierarchy of the United States Attorney's Office and then again reviewed by three levels of senior officials at the Department of Justice in Washington: first by the heads of CEOS (the Child Exploitation and Obscenity Section), then by the Criminal Division, and finally by the Deputy Attorney General, Mark Filip, who was the principal decision-maker other than the Attorney General himself..

A core of the architecture of the criminal justice system's division of power between state and federal criminal laws is the principle that absent a clear indication by Congress that a federal statute is intended to effect a "significant change in the sensitive relationship between federal and state criminal jurisdiction" prosecutors and Courts are required to narrowly construe the scope of federal criminal statutes. Although the United States Attorney was investigating violations of 18 USC 2423 (prohibiting interstate travel for the purpose of engaging in a sex offense), 18 USC 2422(b) (prohibiting the use of interstate wires to induce a sex offense), and 18 USC 1591 (prohibiting commercial sex trafficking and the use of force and fraud for commercial sex), the factual allegations against Mr. Epstein had the common characteristics of a paradigm state prostitution offense where he, Epstein, paid young women for sex at his own home, where he did not induce them via the internet, where he did not commercially traffic the women for his own economic benefit, where his offenses were ordinarily state misdemeanors where Epstein had the role of a "john". Whether a federal prosecution could prove wrongful intent or inducement when his travel to Palm Beach was to go to his own home where he visited with family and friends or where the communications were limited to scheduling a massage were very close questions that could have resulted in Mr. Epstein's complete acquittal rather than conviction. The Agreement was a classic negotiation between two independent Parties where the Government achieved, without risking acquittal, much of what it sought – imprisonment,

probation, restitution, sex offender registration, and the facilitating of their witness-victims negotiating financial settlements – and where defense counsel, including the undersigned, discharged their professional responsibilities, gaining for their client (as occurs in every negotiation) a moderation of the maximum potential penalty in exchange for an agreement not to seek an acquittal.

In 2007 the United States Attorney negotiated an Agreement that was consistent with the Department of Justice's then existing Crime-Victim policy which required neither consultation nor notification in the event that there would not be a federal prosecution. In 2008 Mr. Epstein went to jail, was given the same work release treatment that was conferred by prison officials on others, was released under strict probationary conditions which he met, registered as a sex offender, paid the court-appointed victim legal representative significant fees to represent victims who were suing him in cases where he was required to agree to not contest liability (a unique benefit to the witnesses), and has thereafter – for now over 10 years – lived without further incident, working hard, obeying the law, giving generously to charity, and avoiding any conduct that does not carefully conform to the requirements of both federal and state law.

11 year old independently negotiated agreements that are fully satisfied do not get ignored or circumvented because of criticism leveled years later by witness-victims who themselves sued and settled civil cases aided by the very Agreement they now condemn. It's time the media stops vilifying ethical prosecutors and stops distorting and even ignoring the many benefits achieved by the Government in its exercise of discretionary prosecutorial decision-making that was reviewed, again, at the highest levels of the nation's prosecutorial authorities. And it's also time for finality – for Mr. Epstein who has fully performed his obligations under the Agreement and for the Government which has been so unfairly criticized in the recent media.